

Internal Revenue Service
Director, Exempt Organizations

Department of the Treasury
P.O. Box 2508 - EP/EO
Cincinnati, OH 45201

Date: MAR 05 2001

Employer Identification Number:
[REDACTED]

Person to Contact - I.D. Number:
[REDACTED]

Contact Telephone Numbers:
[REDACTED] Phone
[REDACTED] FAX

In Reply Refer To:
[REDACTED]

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(3) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for the reasons set forth on Enclosure I.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code. However, we have concluded that you do not qualify under another subsection.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1041 if you are a Trust, or Form 1120 if you are a corporation or an unincorporated association. Contributions to you are not deductible under section 170 of the Code.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues." The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides, in part, that:

A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within the time specified, this will become our final determination. In that event, appropriate State officials will be notified of this action in accordance with the provisions of section 6104(c) of the Code.

Sincerely,

Steven P. Miller

Director, Exempt Organizations

Enclosures: 4
Enclosure (Reason for Proposed Denial)
Form 6018
Publication 892
Envelope

ENCLOSURE I
Reasons for Proposed Denial of Exempt Status
Page 1

[REDACTED]
[REDACTED]
You were incorporated in [REDACTED]
You filed Form 1023, Application For Recognition of Exemption under
section 501(c)(3) of the Code on [REDACTED]

The purposes provided in your Articles of Incorporation are stated as follows:

This corporation is organized exclusively to carry on any lawful non-profit business of enterprise of charitable, religious, educational, or scientific purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under section of any future federal tax code, specifically a public benefit to the community.

Your Bylaws indicate in pertinent part that:

The purposes for which this corporation is formed are philanthropic, to help people who have more credit debt than they can manage and to engage in any lawful activities allowed under the provisions of the 501(c)(3) tax exempt status of the internal revenue code. The activity that will accomplish the above purpose will be to have seminars, workshops, and one on one consultation on credit management in general. These activities will be carried on in conference rooms of people who offered to support us. People who are interested in pursuing individual financial planning and debt consolidation will meet with [REDACTED] who has a background in financial planning.

You are not a membership organization.

Pursuant to your Bylaws, your Board of Directors shall consist of five members. The present Board of Directors consists of:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Page 2 of Form 1023 provided a brief description of your planned activities. The activities were described as:

"Our non-profit corporation will act as credit counsellors and mediators. We plan to help all persons, who have had a credit problem and are struggling with a load of debt that is, or seems, beyond their means to control or repay."

"Initially credit counselling will be performed by [REDACTED] directors who have several years' experience in the credit field. The consulting and counselling offered to people who are financially deficient will help them to become self reliable and productive

ENCLOSURE I
Reasons for Proposed Denial of Exempt Status
Page 2

members of society."

The activity that will accomplish the above purpose will be to have seminars, workshops, and one on one consultation on credit management in general. People who are interested in pursuing individual financial planning and debt consolidation will meet with [REDACTED] who has a background in financial planning.

Your Form 1023 application was accompanied by [REDACTED] from various companies offering monetary and service donations when you received your 501(c)(3) status.

We attempted to secure a more detailed description of activities. In fact, additional information letters were prepared and mailed [REDACTED] and [REDACTED]. The organization responded to each request. However, the responses were often brief or did not fully address the issues raised. Examples include:

Our letter dated [REDACTED] requested a complete description of past, present and future activities. It requested that each activity be listed separately in order of importance and to focus on the who, what, where and when of the various activities.

Your response dated [REDACTED] merely stated, "We are recently incorporated and are presently trying to get organized to do debt consolidation and debt management for people who need our services. In the future, we plan to offer seminars, workshops and individual consultation and counseling to help people manage their finances. The amount of time given to these activities will depend on the response to our marketing, which will be small newspaper ads."

You stated that you do not intend to charge a fixed fee to the client. However, when you are able to negotiate a client's debt so that the total amount is reduced or his payment schedule is extended and there are savings to the client, your organization would receive [REDACTED] % of the savings. Clients receiving your credit counseling are required to pay \$[REDACTED] per hour per your letter of [REDACTED] or \$[REDACTED] per interview or \$[REDACTED] per hour whichever is greater per your letter of [REDACTED]

On [REDACTED], you stated that you would conduct activities from existing space inside [REDACTED] insurance agency and that there is no charge for using this space. On [REDACTED], you stated that the credit counseling function will be in a separate enclosed office within the insurance agency and that all shared expenses will be absorbed by the insurance agency. However, Line 20 on Page 8 of your Form 1023 submitted on December 1, 1999 shows occupancy expenses of \$[REDACTED] for the [REDACTED] years of operation.

Our letter of [REDACTED] asked questions concerning the five companies who wrote letters of support included with your original application. We asked "For each company, please list the

ENCLOSURE I
Reasons for Proposed Denial of Exempt Status
Page 3

contributions of equipment/services that you expect to receive and state how that will help you accomplish your exempt purposes."

You stated that the help and support offered in your initial Form 1023 by [REDACTED] is no longer necessary.

Our letter dated [REDACTED] asked "How do you plan to conduct your credit counseling activity? Explain a typical counseling session. To whom will you provide the services? What specific services will you provide to your clients?"

Your response stated "The person will come into my [REDACTED] office for a fact finding activity of current debt. Depending on the circumstances of the person's financial condition, I might require him to order a credit report or it may require a single phone call to a credit card agency. I [REDACTED] expect that there will be no set scenario."

The response also stated that initially the services will be directed to [REDACTED]'s current clients of his property and casualty insurance business and that only [REDACTED] will do counseling about [REDACTED] hours a week - initially at no pay.

Our letter dated [REDACTED] asked several questions:

1. We asked you to submit copies of any literature, contracts or other agreements to be given to prospective clients and creditors. "If you have no literature, please explain why."

You answered "There is no literature and I do not see there will be any in the foreseeable future."

2. We asked you to explain how your counseling services differ from those of a for profit organization.

You answered "No part of the organization's net earnings will benefit any individuals responsible for the corporation."

3. We asked you to describe a typical workshop or seminar.

You answered "Although I stated in my letter on [REDACTED] that I would hold seminars and workshops, I have decided not to do that."

4. We asked several questions concerning [REDACTED] past relationships with other corporations.

You answered "I am no longer involved with other corporations so this question doesn't pertain to my present status."

You indicate that your sources of financial support include

ENCLOSURE I
Reasons for Proposed Denial of Exempt Status
Page 4

contributions from corporations and the private sector. You further state that you do not have a fundraising program. However, your budgets reflect fundraising expenses.

Your budgeted revenue and expenses from Form 1023, page 8 for the first two years of operation are as follows:

Your revenue:

\$

Your expenses:

\$

\$

\$

\$

TOTAL EXPENSES

Section 501(c)(3) of the Code provides, in part, for the exemption from Federal income tax of organizations organized and operated exclusively for charitable, religious, educational or scientific purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations states that in order to qualify under section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more exempt purposes. If an organization fails to meet either the organizational or operational test, it is not exempt.

Section 1.501(c)(3)-1(a)(2) of the Regulations states that the term "exempt purpose or purposes", means any purpose or purposes specified in section 501(c)(3) of the Code.

Section 1.501(c)(3)-1(c)(1) of the Regulations states that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations states, in part, that an organization is not operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. It must not be operated for the benefit of designated individuals or the persons who created it.

Section 1.501(a)-1(c) of the Regulations provides that the terms "private shareholder or individual" in section 501(c)(3) refer to persons having a personal and private interest in the activities of the organization.

ENCLOSURE I
Reasons for Proposed Denial of Exempt Status

Page 5

In Better Business Bureau of Washington, D.C., v. United States, 326 U.S. 179, the Supreme Court held that the presence of a single purpose not described in section 501(c)(3) of the Code, if substantial in nature, will preclude exemption under section 501(c)(3) regardless of the number or importance of truly exempt purposes.

Operating for the benefit of private parties constitutes a substantial nonexempt purpose. Old Dominion Box Co. v. United States, 477 F.2n 340(4th Cir. 1973), cert. denied 413 U.S. 910(1973).

Leon A. Beechly v. Commissioner, 33 T.C. 490 (1960), provided that where an exempt organization engages in a transaction with related interest and there is a purpose to benefit the private interest rather than the organization, exemption may be lost even though the transaction ultimately proves profitable for the exempt organization.

In Consumer Credit Counseling Services of Alabama, Inc. v. U.S., 44 A.F.T.R.2d(P-H)5122 (F.D.C. 1978), held that consumer credit services provided by the organization for a nominal fee are exempt under section 501(c)(3) of the Code.

In Credit Counseling Centers of Oklahoma, Inc. v. U.S., 45 A.F.T.R.2d(P-H)1401 (F.D.C.), held that consumer credit services provided by the organization for a nominal fee are exempt under section 501(c)(3) of the Code.

Revenue Ruling 65-299, C.B. 1965-2, 165, held that a nonprofit organization formed to advise, counsel, and assist individuals in solving their financial difficulties by budgeting their income and expenses and effecting an orderly program for the payment of their obligations qualifies for exemption from Federal income tax under section 501(c)(4) of the Code (rather than under section 501(c)(3)).

Revenue Ruling 69-441, 1969-2 CB 115, held that aiding low-income individuals and families who have financial problems and by providing, without charge, counseling and a means for the orderly discharge of indebtedness, the organization is relieving the poor and distressed. Furthermore, by providing the public with information on budgeting, buying practice, and the sound use of consumer credit, the organization is instructing the public on subjects useful to the individual and beneficial to the community.

In applying the law to the facts, we conclude the following:

You are not an organization described in section 1.501(c)(3) 1(a)(1) of the Income Tax Regulations because you are not operated exclusively for charitable or educational purposes since you have no educational or charitable component. You have negated your plans to conduct educational seminars. In addition, you have no charitable component due to the fact that you will not provide credit counseling services for a nominal fee. Your fee structure is comparable to fees charged by a for-profit credit counseling service.

You are not an organization described in section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations since your organization serves private interest rather than public interest. You are operating in shared office space of a for-profit insurance business owned by [REDACTED], [REDACTED] of your organization. Your initial services will be directed toward the current clientele of [REDACTED] insurance business. Your activities are conducted by [REDACTED] and there is no clear explanation of the role of the additional board members. Thus, the credit counseling service appears to be an extension of the insurance business.

You are not described in Rev. Rul. 69-441 since your services are not provided without charge.

You are not similar to Consumer Credit Counseling of Alabama, Inc. v. U.S. or Credit Counseling Centers of Oklahoma, Inc. v. U.S. because your services are not provided at a nominal fee.

You are similar to Old Dominion Box Co. v. United States and Leon A. Beegly v. Commissioner since you are closely related to the for-profit insurance business of your [REDACTED]. You are conducting commercial activities in conjunction with the for-profit insurance business of your [REDACTED].

You are similar to Better Business Bureau of Washington, D.C. v. United States, since you have the presence of purposes not described in IRC section 501(c)(3).

Accordingly, we conclude that you are not operated exclusively for one or more exempt purpose within in the meaning of section 501(c)(3) of the Code. Your operations are indistinguishable from those of a for-profit credit counseling service. Therefore, you do not qualify for exemption under section 501(c)(3) of the Code.